

Exhibit 8

***United States of America ex rel. Ven-A-Care of the Florida Keys, Inc.,
et al. v. Dey, Inc., et al., Civil Action No. 05-11084-PBS***

**Exhibit to the Declaration of Marisa A. Lorenzo in Support of Dey's
Motion to Exclude the Opinions of Mark Duggan, Ph.D.**

Hartman, Ph.D., Raymond S. - Vol. II

Boston, MA

July 23, 2009

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IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

CAUSE NO. D-1-GV-07-001259

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THE STATE OF TEXAS, ex rel. VEN-A-CARE)

OF THE FLORIDA KEYS, INC.)

Plaintiffs,)

v.)

SANDOZ, INC., et al.)

Defendants.)

(COMPLETE CAPTION ON FOLLOWING PAGE))

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VIDEO DEPOSITION OF

RAYMOND S. HARTMAN, PH.D.

VOLUME II

Boston, Massachusetts

Thursday, July 23, 2009

9:58 a.m. to 5:19 p.m.

Reporter: Justina M. Pettinelli, RDR/CRR

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1 for reimbursement for a lot of payers; and when
 2 that is recognized, there's -- the ability to
 3 compete on spread arises when there are list
 4 prices that are AWP and WAC for a drug, either
 5 one, and that deviate substantially from
 6 acquisition prices, from transactions prices.
 7 Q. So in terms of -- as far as you know,
 8 there isn't a consistent fixed percentage
 9 relationship between AWP and WAC on generic drugs,
 10 would you agree with that?
 11 A. I have not studied it to know that there
 12 is one in the way that there is for innovator
 13 drugs.
 14 Q. And in the Mylan drugs that you studied,
 15 did you see that there was any consistent
 16 percentage relationship between AWP and WAC?
 17 A. I didn't look at that.
 18 Q. You also say "Since AWP and its related
 19 WAC are often used as the primary bases for
 20 reimbursement," do you see that part?
 21 A. I do.
 22 Q. Is it your testimony that AWP is used as
 23 the primary basis for reimbursement in Texas?
 24 A. Well, what -- it's my testimony that
 25 Texas has, over the period of time we're focusing

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1 on, has been asking for transactions prices; and
 2 they've also asked for AWP and WAC as what -- the
 3 list prices as they are. They've been trying to
 4 get measures of WEAC, DEAC, et cetera.
 5 And certainly for -- this is -- I'm
 6 talking about reimbursement generally here, and
 7 AWP we know has driven reimbursement for Medicare
 8 Part B through the MMA. We know that Texas has an
 9 AWP less and/or WAC plus when they can't get the -
 10 - when they're using -- when they're trying to get
 11 at acquisition costs. So AWP and WAC have been
 12 used when there's not substantial information
 13 about what acquisition costs actually are because
 14 it's the only information that is available to
 15 some payers.
 16 Q. AWP -- as far as you can tell from your
 17 study on this case in terms of the Mylan drugs,
 18 AWP was not a basis for reimbursement on any
 19 significant number of drugs, was it?
 20 A. I didn't -- in terms of duplicating the
 21 claims, I do not think that it was a -- but I'd
 22 have to look.
 23 Q. Did you actually look to determine the
 24 frequency where a Mylan AWP was used to establish
 25 the EAC in Texas for any of the drugs at issue?

1 A. Well, the -- if you look at the
 2 Attachment C, page 2, I've listed the cost basis
 3 submitted codes in the VDP claims; and when the
 4 information on WEAC was not provided, AWP was a
 5 fallback estimate of it because they weren't --
 6 the state wasn't provided a measure of the WEAC.
 7 And if I look at the claims paid in Table C.1,
 8 WEAC was the basis for 34 percent of the Mylan
 9 claims paid.
 10 Q. But did you see any instances where
 11 Mylan did not provide a WAC when it provided an
 12 AWP?
 13 A. I didn't -- I didn't look at whether
 14 there was one or the other. I used whatever the
 15 algorithm was for the lesser of for the various
 16 prices, and that was the basis of my calculation.
 17 I duplicated the claims payment that way. So --
 18 Q. You wouldn't expect to see that AWP was
 19 used very much, if at all, by Texas to reimburse
 20 on Mylan drugs, would you agree with that?
 21 A. Well, WEAC was used 34 percent of the
 22 time in the claims that I have for Mylan, and
 23 that's of a subset of the claims that passed the
 24 screen of dropping out a variety of claims.
 25 Q. Okay. In setting a WEAC for Mylan

1 drugs, you would not expect that the AWP reported
 2 to Texas by Mylan was used very much, if at all?
 3 A. Well, the base -- the claim submitted
 4 basis for a WEAC was -- the AWP appears as that
 5 basis in the claim, the base -- let me get the
 6 exact title of the variable for you -- the cost
 7 basis submitted.
 8 So because there was not a measure of
 9 WEAC, the cost to the pharmacy through
 10 wholesalers, it's a lesser of, I know they do a
 11 calculation of a lesser of, but AWP was used, and
 12 it was the source of that, as I understand it, for
 13 WEAC on that number of claims.
 14 Q. You're saying that the AWP -- that the
 15 Mylan AWP was actually the amount used to set the
 16 WEAC on any of the Mylan drugs?
 17 A. I'm saying that the -- with the cost
 18 basis submitted codes that were analyzed by Steck,
 19 there were three codes that could be applied, and
 20 it was 1, 3, and 9. That was for the WEAC, the
 21 DEAC, and the warehouse price. And the WEAC price
 22 was the AWP. And the number of claims paid on
 23 WEAC were 34 percent of the total that I've looked
 24 at here.
 25 Now, to the extent that I also

17 (Pages 328 to 331)